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MISSOURI RIVER DECISIONS DISAPPOINTING FOR NORTH DAKOTA

BISMARCK – In an order issued today, the United States Supreme Court declined to get involved in one of the numerous lawsuits filed in recent years over the Corps of Engineers' management of the Missouri River. "We thought the Supreme Court needed to get involved in this complex litigation and are deeply disappointed that it declined to do so." Attorney General Wayne Stenehjem said.

Last summer the Eighth Circuit Court of Appeals ruled that the 1944 Flood Control Act, that governs the Corps' operations on the river, gives navigation priority over recreation interests. North Dakota believed that the decision misread Congress' intent in enacting the law. Stenehjem added: "We felt that the Supreme Court needed to review the decision."

The Supreme Court's ruling essentially ends a lawsuit North Dakota brought in 2002 in an effort to change the Corps' Missouri River management. North Dakota has fought for more water in Lake Sakakawea to support its fisheries and recreation, which contributes over \$80 million to the state's economy, while downstream interests have demanded that the water be released for the \$7 million barge industry.

In 2003, the state brought a second lawsuit against the Corps. That suit asserted that the Corps' drawdown of Lake Sakakawea violated water quality standards the state adopted under the federal Clean Water Act. Last week that suit was dismissed by a St. Paul federal judge, Paul Magnuson, who is handling all the Missouri River litigation filed over the past two years. "Judge Magnuson said that the Corps is immune from suit." Stenehjem stated. "Within the next week or so we will ask the Court of Appeals to review this ruling."

"Although we have fought hard to protect the state's interests and won some skirmishes, such as protecting Lake Sakakawea's 2002 and 2003 smelt spawn, these two recent decisions are a one-two punch against the interests of North Dakota." Stenehjem stated. "But the fight isn't over."

Stenehjem stated that North Dakota has successfully intervened in a suit brought against the Corps by American Rivers and other environmental groups. That suit raises claims that the Corps' management of the river violates the Endangered Species Act because it deprives the endangered least tern, piping plover, and pallid sturgeon of the habitat they need to survive.

"American Rivers' suit, if it succeeds, would require the Corps to lower releases in the summer, which would help our upstream reservoirs." Stenehjem said. "We will give all the support we can to American Rivers' suit."

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